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# MEMORANDUM

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OFFICE OF  
THE  
CITY ATTORNEY  
CIVIL DIVISION  
(520) 791-4221

**DATE:** 8 June, 1998  
**TO:** Brad Detrick, Dep. City Atty. **FROM:** Bill Whitman

**RE:** Response to referral from Bicycle Advisory Committee re: crosswalks and trolley track claims.

I have gathered information concerning the number, amount and status of claims against Old Pueblo Trolley for accidents concerning the tracks we have researched the suits filed against the City of Tucson and the trolley company and located eight suits filed in Pima County Superior Court. With the exception of the case of Pitpitan v. City of Tucson arising out of an accident in 1989 where Old Pueblo Trolley's private insurer settled the claim for \$200,000, the remaining seven cases either resulted in verdicts for the City and Old Pueblo Trolley after trial or were dismissed for various reasons. Thus, with the exception of the noted case, no suit against the City of Tucson and Old Pueblo Trolley has been successful which arose out of "falldown" accidents involving bicycles and the tracks.

You further requested information from the Tucson City Attorney's Office regarding the legality of riding a bicycle within a crosswalk in the corporate limits of the City of Tucson and in non-City of Tucson jurisdiction crosswalks under Arizona law.

Your primary concern involves bicycle path extensions across roadways at intersections and other non-intersection crosswalks.

## REVIEW OF ARIZONA STATUTES IN EFFECT

Pursuant to Arizona Revised Statutes §28-812 (hereafter A.R.S. §\_\_\_) bicyclists in the roadway are granted all the rights and subject to all the duties of a driver of a motor vehicle except as specifically provided in other sections applicable solely to bicycle operation.

A.R.S. §28-815 requires bicycles to be driven upon the roadways as close to the right hand curb or edge of the roadway except in specifically enumerated circumstances no applicable to your question here.

A.R.S. §28-601(19) defines a "roadway" to be that portion of a highway improved, designed or maintained for vehicular travel exclusive of berms or shoulders. Although a "crosswalk" is defined in A.R.S. §28-601(3) as "part of the roadway at an intersection" which is prolongation of the sidewalks, it is limited to that portion of the roadway measured from the curb or edges of the traversible roadway. A "crosswalk" may also be a portion of the roadway distinctly, but not exclusively in the statute, indicated for pedestrian crossing. While it is illegal in the City of Tucson to ride a bicycle on a sidewalk, Tucson Code §5-2, there is neither any specific prohibition nor specific authorization to ride a bicycle in a crosswalk.

### **ARIZONA AND OTHER CASE LAW WHICH IS APPLICABLE**

In your request you cite and attach a copy of the Arizona Supreme Court opinion of Maxwell v. Gossett, 126 Ariz. 98, 612 P.2d 1061 (1980). In this case the Court held that under Arizona law at the time it is not a per se violation of Arizona statutes to ride a bicycle in a crosswalk. In the Maxwell opinion the Court relied in part upon the 1977 Washington appellate decision of Crawford v. Miller, 18 Wash.App. 161, 566 P.2d 1264 (1977). In that case the court held that a crosswalk is not a roadway and a person astride a bicycle is considered a pedestrian and granted the right-of-way protection while in the crosswalk.

Crawford recently was revisited by the Washington court of appeals in the case of Pudmaroff v. Allen, 951 P.2d 335 (Wash.App.Div. 1 1998). In that case, the plaintiff was riding on an interurban bicycle trail that intersected and crossed a roadway at a marked crosswalk. Plaintiff stopped, observed for traffic then mounted his bicycle and started to cross but was struck by a car and injured. Although noting that under Washington law it is legal to ride a bicycle on a sidewalk, which is illegal in Tucson, the court further noted that marked crosswalks inconnecting portions of bicycle paths were intended for users of the bicycle trail. In recognizing an exceedingly strong level of protection afforded crosswalk users, the court held that:

"a crosswalk user on a bicycle is entitled to the same protections – and has the same duties – as a crosswalk user on a skateboard, on foot, in a wheelchair: once such a crosswalk user safely enters a crosswalk, he or she has the right-of-way over approaching motorists. Users of crosswalks must exercise due care and caution for their own safety and may not suddenly dart in front of traffic. A crosswalk is not a sanctuary. But once the child on a bicycle is properly in the crosswalk, the motorist's duty should be no different toward the bicyclist than toward the person on foot: a continuous duty of observation, and a duty to yield to the user of the crosswalk." 951 P.2d at 338.

The reasoning in Pudmaroff is also useful in diminishing any reliance on A.R.S. §28-101(37) (pedestrian defined as person afoot or in a wheelchair) in establishing a limitation on riding a bicycle in a crosswalk. "The skateboarder, the skater, and the bicyclist are similar in that all are capable of moving quickly and pose a similar danger of suddenly darting into traffic. . . . [We] see no principled basis for distinguishing between bicyclists and those statutorily defined as pedestrians in the degree to which they are afforded the protection of the crosswalk." 951 P.2d at 338.

In a similar case from Illinois, that state's appellate court, in Dinelli v. County of Lake, 229 Ill.Dec. 284, 691 N.E.2d 394 (1998), found that a crosswalk connecting portions of a bike path were intended as a means for bicyclists and other pedestrians using the path to cross the road and continue to engage in their recreational activities.

Despite the holdings in the cases above, the question still exists whether it is legal to ride in the crosswalk or whether the bicyclist must dismount and walk across. This question was answered by the Nebraska court of appeals in Luellman v. Ambroz, 2 Neb. App. 855, 516 N.W.2d 627 (1994). The court found the Kansas case of Schallenberger v. Rudd, 244 Kan. 230, 767 P.2d 841 (1989), persuasive for the holding that bicycle riders and users of other human-powered conveyances (such as skateboards, tricycles, wheelchairs, baby carriages and toy wagons) legally in crosswalks are entitled to the same rights as pedestrians. Hence – in construing the obligation of a driver to yield the right-of-way before making a right or left turn at an intersection under a statute similar to A.R.S. §28-645 – the Nebraska court held that if the bicyclist was "within the crosswalk on his bicycle, he was riding a vehicle lawfully within the crosswalk, just as a pedestrian might also be in the crosswalk. [The automobile] did not have the right-of-way as a matter of law." 516 N.W.2d at 634.

Although the analysis of Arizona statutory and case law, as well as case law from other jurisdictions, indicates that it is not a violation of law to ride a bicycle in a crosswalk, the Arizona court in Maxwell and the Washington court in Pudmaroff express concerns which should be heeded. In Pudmaroff the court held that bicyclists must still exercise due care and concern for their safety while about to enter or in the crosswalk.

Nearly 20 years ago the Arizona Supreme Court in Maxwell was

"aware that teachers and concerned parents regularly instruct their children to dismount and walk their bicycles through the crosswalks or major intersections, and that their children, just as regularly, ignore this sound advice. However, this a question of general contributory negligence . . . not negligence based on violation of the statute." 612 P.2d at 1063.

Moreover, Justice Hays, specially concurring, was

"disturbed by the fact that the legal duties and obligations of persons on bicycles are not defined in the law. Some bicyclists ride with traffic, others ride facing

traffic, and of course some ride in the crosswalk. Our statutes give no indication of what is and is not appropriate. I think this is a matter for the legislature and I hope they will take the time to determine what should be the rights and the obligations of those who use bicycles in today's heavy traffic." 612 P.2d at 1064.

## **CONCLUSION**

To date the legislature has not significantly addressed either the concerns of the majority opinion in Maxwell or the questions raised by Justice Hays' concurrence.

In any event, it is apparent that under the present state of the law in Arizona a bicyclist is not prohibited from riding on or across a crosswalk between either the lateral roadway boundaries of a marked crosswalk at an intersection, nor upon a marked crosswalk connecting the extensions of a bicycle path.

**WSW**

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